

REMARKS

Claims 1 – 14 and 16 – 43 were previously pending the application.

Section 112, First Paragraph

Claims 8 – 10, 4 – 26 and 41 – 43 were rejected under the enablement requirement of Section 112, First Paragraph. Applicant disagrees with this rejection. However, these claims have now been canceled, without prejudice, for the purpose of placing the claims overall in a better position for consideration on appeal and limiting the number of issues on appeal.

Section 103(a)

Claims 1 – 7, 10, 14, 16 – 17, 20, 22 – 23, 26 – 27, 32 – 34, 37, 39 – 40 and 43 were rejected under 35 U.S.C. 103(a) as unpatentable over U.S. Patent No. 5,478,238 to Gourtou et al. in view of U.S. Patent No. 4,987,552 to Nakamura et al. Applicant respectfully disagrees with this rejection. One of skill in the art would not have seen the benefit of upgrading or otherwise combining Gourtou et al. with the teaching of Nakamura et al.

Gourtou et al. uses a video camera to capture a single individual characteristic – skin color. However, other characteristics such as hair color and eye color are entered into the system manually, without using the camera. Accordingly, at the outset Applicant argues that (as is/was the case with MacFarlane and Fabbri), it would be improper to combine Gourtou et al. and Nakamura et al. since the image data of Gourtou et al is limited to a single physical characteristic. As such, a person of ordinary skill upon reading Gourtou et al. would clearly be discouraged from combining Gourtou et al with Nakamura et al.

In addition, Applicant notes that Nakamura et al. does not capture data, and instead relies upon manual data entry. More specifically, Nakamura et al. teaches at Col. 2, lines 50 – 56 that “[i]nformation concerning characteristics of individual users is entered into the generator 7. For example, information related to a user’s face shape may be input in this generator. This information may be obtained, for example through an interview with the customer, a questionnaire, or photographs.” Thus, like Gourtou et al., Nakamura et al. relies upon the manual input of characteristic data that must first be painstakingly gleaned from direct customer interviews, questionnaire, and/or photographs.

Therefore, in sum, Nakamura et al. adds nothing new when combined with Gourtou et al. Gourtou et al. is limited to capturing an image including only one characteristic. Furthermore, both references disclose that various types of physical data may be manually entered. Thus, at a minimum the cited combination would require the extra step of manual data entry. The reliance of manual entry also means that the combined system would necessary output information based upon *predefined* definitions of physical characteristics, and not based upon individual actual characteristics as directly measured and reported by the input device. Indeed, simply absent from art, including the combination of Gourtou et al. and Nakamura et al., is any disclosure, teaching or suggestion of using an input device operable to capture an image of the individual that includes at least two physical characteristics about the individual.

Dependent claims 8, 9, 12, 13, 18, 19, 24, 25, 28 – 30, 35, 36, 41 and 42 were rejected under 35 U.S.C. 103(a) as being unpatentable over Gourtou et al, in view of Nakamura, in further

view of U.S. Patent No. 5,311,293 to MacFarlane. Applicant, however, respectfully submits that these dependent claims allowable since they depend from an allowable base claim.

Dependent claims 11, 21, 31 and 38 were rejected under 35 U.S.C. 103(a) as being unpatentable over Gourtou et al, in view of Nakamura, in further view of to MacFarlane, and in view of U.S. Patent No. 5,206,804 to Theis et al. Applicant, however, respectfully submits that these dependent claims allowable since they depend from an allowable base claim.

Reply to Examiner's Response to Arguments

Applicant acknowledges the withdrawal of the Section 101 rejection. Applicant also notes the withdrawal of the Section 103(a) rejection base upon MacFarlane and Fabbri. However, Applicant too maintains its previous arguments concerning teaching away.

Therefore, in view of the above amendments and remarks, Applicant submits that the application is in condition for allowance.

Dated: March 31, 2008

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